O/C.T.M./49

1949 **K** **File No.** G 9/49

Legal Dept.

G. **BRANCH**

SNL 2716

Subject:— Opinion under the Cotton Textiles (Control of Movements) order 1946

File No. O/C.T.M./49

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G 9/49

C O N T E N T S.

Legal Department File No. O/CTM/49

Sr.No.	R.No./O.No.	Subject.	Pages.
		Opinions under the Cotton Textiles (Control of Movements) Order, 1946.	
1.	G/708/16.12.1948	Whether it would be admissible to prosecute one Shri Patel from Dangs District under clause 3 for attempting to transport 44 lbs. of cotton cloth by rail from Waghai Station on 15th May 1948 legal position being that the control orders in the Province have made applicable to Dangs District on 10.7.1948 with retrospective effect from 13th January 1948.	1-2
2.	G/239/28.3.49	Whether in case of transport of textiles from India to places outside India, the accused should be charge-sheeted both under clause 3 of this order and Section 5 of the Import and Exports (Control) Act, 1947	3-6
3.	460/22.6.49	Clause 3 Whether prosecution against Mr. Harischandra Jagjivan and Mr. Chandulal Veerchandra can be legally successful for transportation of handloom and yarn from Bombay to Nasik. (copies not made)	7-10
4.	694/19.1.1949. G/642/4.11.1949.	Criminal Case No.3429/P of 1948 King Emp. Vs. Haji Aboobakar. (copies not made)	11-28

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G.O. R.D.No.6775/45 (a) dated 10.7.48 has been issued under article 5 of the Bombay (Enlargement of Areas and Alteration of Boundaries) Order, 1947. Sub-article (3) of article 5 of the said Order provides that any Order made under this Article may be made so as to be retrospective to any date not earlier than the date of the commencement of this Order. Government, therefore, by their Order in R.D. dt. 10.6.48 made all the laws in force in this Province applicable to the Dangs District from 19th January 1948. The Cotton Textiles (Control of Movement) Order, 1946 which was made by the Central Government under the Defence of India Rules and which was continued in force under the Essential Supplies (Temporary Powers) Act, 1946 after the expiry of the Defence of India Rules is a law which is in force in the Bombay Province and it is made app icable to the Dangs District from 19.1.48. However such a retrospective effect has been given for administrative convenience and to validate certain orders or acts of officers issued or done between the period 19.1.48 to 10.7.48. Though retrospective effect has been given by using express language in the statute, still in respect of offences it will be inequitable to hold that an act legal at the time of doing it, should be declared unlawful subsequently and the person doing it should be prosecuted. "Revenue Acts are often made to take effect as from a day before their passing. But extremely plain language would be needed to render penal an act done before the passing of a statute" (p.330 of Craies on Statute Law 4th edn). As transporting of cloth by rail in excess of the prescribed limit was not known to the accused to be an offence when he is ~~xx~~ alleged to have committed it, no court would hold him liable for it. It is true that in this case Mr.Patel was a partner of M/s.Ambalal Chhotabai & Co. who were informed by the District Magistrate on 13.5.48 that no export permit could be issued and cloth should not be exported out of the Dangs by anybody. But this appears

to be a mere executive order which Mr. Patel ~~ws~~ is not bound to obey and of which besides he pleads ignorance. The District Magistrate may therefore be informed that it would not be advisable to prosecute Mr. Patel for breach of any of the Control Orders of this Province made applicable to the Dangs on 10.7.48 with retrospective effect from 13.1.48.

Sd/- P.N.Lau,
Remembrancer of Legal Affairs,

U.R. to the P.T.C/VII, No.G/708, dated, 16th December 1948.

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Under Textile Commissioner's Notification transport of cloth by rail, read or sea from any place in Bombay City to any place outside that area was prohibited except in accordance with transport instructions issued by the Registration Officer. Under clause 3 of the new order viz. the Cotton Textiles (Control of Movement) Order, 1948 transport of cloth by rail, road, sea or air or inland navigation is prohibited except under and in accordance with.

i) a general permit notified by the Textile Commissioner or

ii) a special transport permit issued by the Textile Commissioner. Under the General Permit No.1 notified by the Textile Commissioner under notification No.101/19-Tex 1/48(1), dated 10.8.1948 India is divided into a number of zones and certain exemptions are granted. On the plain reading of clause 3 it is apparent that transport of cloth is prohibited no matter whether such transport is to a place in India or outside India. Though the Textile Commissioner who is the authority to issue the permits has made it clear that no such permits are issued by his office for transport of cloth to a place outside India which falls under the Export Control Regulations, we find that the courts have convicted the accused under the Cotton Textiles (Control of Movement) Order on the plain reading of the clause. However as suggested by the Textile Commissioner. ex-majore cautela, fresh prosecutions may be launched under both the enactments.

As regards cases in which convictions have been secured under the Cotton Textiles (Control of Movement) Order, it is not necessary to prosecute the accused over again under the Imports and Exports Control Act or vice versa.

Sd/- P.N.Lad,
Remembrancer of Legal Aggairs.

U.R. to the P.T.C. No.G/239, dated 28.3.49.

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